

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Erin Sweeney	Team: Squad #11	CCRB Case #: 201603090	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 04/03/2016 4:20 PM	Location of Incident: [REDACTED]	Precinct: 10	18 Mo. SOL 10/3/2017	EO SOL 10/3/2017	
Date/Time CV Reported Mon, 04/04/2016 1:57 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 04/11/2016 11:07 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Peter Marter	18790	927136	010 PCT
2. POM Timothy Finn	02795	951733	010 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Peter Marter	Abuse: PO Peter Marter stopped [REDACTED]	[REDACTED]
B.POM Timothy Finn	Abuse: PO Timothy Finn stopped [REDACTED]	[REDACTED]
C.POM Peter Marter	Abuse: PO Peter Marter threatened to arrest [REDACTED]	[REDACTED]
D.POM Timothy Finn	Abuse: PO Timothy Finn threatened to arrest [REDACTED]	[REDACTED]
E.POM Peter Marter	Discourtesy: PO Peter Marter spoke discourteously to [REDACTED]	[REDACTED]
F.POM Peter Marter	Abuse: PO Peter Marter threatened to seize [REDACTED] property.	[REDACTED]
G.POM Timothy Finn	Discourtesy: PO Timothy Finn spoke discourteously to [REDACTED]	[REDACTED]
H.POM Timothy Finn	Abuse: PO Timothy Finn frisked [REDACTED]	[REDACTED]
I.POM Timothy Finn	Abuse: PO Timothy Finn searched [REDACTED]	[REDACTED]
J.POM Timothy Finn	Abuse: PO Timothy Finn interfered with [REDACTED] use of a recording device.	[REDACTED]
K.POM Timothy Finn	Abuse: PO Timothy Finn searched [REDACTED] recording device.	[REDACTED]
L.POM Timothy Finn	Abuse: PO Timothy Finn deleted information on [REDACTED] electronic device.	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]

Case Summary

On April 3, 2016, at approximately 4:20 p.m., at [REDACTED] [REDACTED] [REDACTED] in Manhattan, [REDACTED] [REDACTED] was working at a food cart that belongs to his friend when the wind caused his umbrella to detach from the cart. The umbrella hit and cracked the windshield of a parked vehicle belonging to [REDACTED] [REDACTED] [REDACTED] called 911 to report the incident, and PO Peter Marter and PO Timothy Finn of the 10th Precinct arrived at the scene. PO Marter and PO Finn stopped [REDACTED] [REDACTED] (**Allegations A and B**). PO Marter and PO Finn each told [REDACTED] [REDACTED] that if he did not pay [REDACTED] [REDACTED] for the windshield, he would go to jail (**Allegations C and D**). [REDACTED] [REDACTED] said that he did not have the money to pay [REDACTED] [REDACTED] and PO Marter allegedly said, “What the fuck did you do all morning?” (**Allegation E**). PO Marter said he was going to take [REDACTED] [REDACTED] cart (**Allegation F**). PO Finn stated, “It’s either [you pay], or you’re coming with me in handcuffs, and you’re not getting out until fucking Saturday next week,” and allegedly stated, “We get tired of these pieces of shit in the street,” and “You’re going to pay the fucking money now or you’re going to stay in jail until next week,” (**Allegation G** for discourtesy; threat of arrest is subsumed in **Allegation D**). PO Finn placed [REDACTED] [REDACTED] in handcuffs and told him he was under arrest (subsumed in **Allegation B**). PO Finn then frisked and searched [REDACTED] [REDACTED] (**Allegations H and I**). As he searched him, he retrieved [REDACTED] [REDACTED] cell phone from the back left pocket of his pants. PO Finn allegedly deleted the video on the phone before placing the phone inside of [REDACTED] [REDACTED] jacket (**Allegations J, K and L**). PO Marter is cited for failing to prepare a memo book entry (**Allegation M**). [REDACTED] [REDACTED] then said he would pay [REDACTED] [REDACTED] and PO Finn released him from the handcuffs. [REDACTED] [REDACTED] paid [REDACTED] [REDACTED] and was neither arrested nor issued a summons.

This case was reassigned to Investigator Erin Sweeney on June 8, 2016, following Investigator Nora Stephen’s departure from the CCRB.

§ 87(2)(g) [REDACTED]

Manhattan South Investigations is conducting a concurrent investigation.

[REDACTED] [REDACTED] was able to recover the video footage from his phone, and he provided it to the investigation (Board Review 4 for original video; Board Review 5 for Snagit video; Board Review 6 for transcription).



201603090_20160617_1127_DM.mp4

Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED]
- On June 10, 2016, a Notice of Claim was requested from the New York City Office of the Comptroller. It will be added to the case file upon receipt (Board Review 1).
- [REDACTED]

Civilian and Officer CCRB Histories

- This is [REDACTED] [REDACTED] first complaint with the CCRB (Board Review 2).

- PO Marter has been a member of service for 15 years. He has 34 total allegations in 18 cases (including this one). In case numbers 200904931 and 201310993, he was cited for failing to prepare a memo book entry. In case 200409671, a discourtesy was alleged, and it was closed as complainant uncooperative. In case 200508549, threat of arrest and discourtesy were alleged, and they were closed as unsubstantiated. In case 200800004, a discourtesy was alleged, and it was unsubstantiated. In 201404944, discourtesy and stop allegations were closed as complainant uncooperative. In case 201509104, a stop and threat of arrest were exonerated. There are no other patterns or substantiations.
- PO Finn has been a member of service for four years. He has 12 allegations in three cases (including this one). In case number 201305219, vehicle search, threat of arrest, and discourtesy allegations were closed as unsubstantiated. There are no substantiations or other patterns.

Findings and Recommendations

Allegation A –Abuse of Authority: PO Peter Marter stopped [REDACTED] [REDACTED]

Allegation B–Abuse of Authority: PO Timothy Finn stopped [REDACTED] [REDACTED]

Allegation C –Abuse of Authority: PO Peter Marter threatened to arrest [REDACTED] [REDACTED]

Allegation D–Abuse of Authority: PO Timothy Finn threatened to arrest [REDACTED] [REDACTED]

[REDACTED] [REDACTED] acknowledged that the wind caused the umbrella attached to his food cart to blow off and hit [REDACTED] [REDACTED] vehicle. [REDACTED] [REDACTED] son (name unknown) told [REDACTED] [REDACTED] that the umbrella had caused a scratch on the windshield, and that [REDACTED] [REDACTED] had to pay \$300, or else he would call the police. [REDACTED] [REDACTED] said that the wind had caused the umbrella to fall, not him. PO Marter and PO Finn arrived in a marked police vehicle, and they spoke to [REDACTED] [REDACTED] for approximately five minutes. [REDACTED] [REDACTED] could not hear what they were saying. PO Marter and PO Finn then approached [REDACTED] Elkhouky’s cart. PO Marter stated that [REDACTED] [REDACTED] had to pay the money, or he would have to go to jail. PO Finn said something to the effect of that he had to pay, or else he would have to “come with them in handcuffs.” [REDACTED] [REDACTED] attempted to call his boss to discuss paying [REDACTED] [REDACTED] with money from the cart, but his boss did not answer. [REDACTED] [REDACTED] told the officers that he could not pay the money. PO Marter then told PO Finn to handcuff [REDACTED] [REDACTED] PO Finn placed [REDACTED] [REDACTED] in handcuffs and told him that he was under arrest. [REDACTED] [REDACTED] decided to pay the \$200, the price the officers gave him, and was released from handcuffs. He was in handcuffs for approximately five minutes (Board Review 3).

[REDACTED] [REDACTED] stated that the windshield cost her \$199 to repair (Board Review 7).

The video established that at 13 seconds, PO Finn said, in response to [REDACTED] [REDACTED] saying that he could not pay, “It is either that, or you get arrested for reckless endangerment, alright? So you are going to get arrested for that not being secure, because it could have been dangerous—it could have hit somebody on the street. You understand what I am saying?” At 31 seconds, he said, “You have to either pay her, or you are coming in handcuffs. That’s it. End of story,” (Board Review 4 for original video; Board Review 5 for Snagit video; Board Review 6 for transcription).

PO Finn acknowledged telling [REDACTED] [REDACTED] that he could have been arrested for reckless endangerment. [REDACTED] [REDACTED] said that he was not going to pay and that the officers

could arrest him. [REDACTED] was placed under arrest. Less than one minute after PO Finn placed him in handcuffs, a food vendor from across the street approached [REDACTED] and the two had a discussion in Arabic for approximately four or five minutes. At the conclusion of this conversation, [REDACTED] said that he would pay [REDACTED] and PO Finn uncuffed him. (Board Review 8).

§ 87(2)(g) [REDACTED] PO Marter estimated that [REDACTED] was in handcuffs for one minute (Board Review 9).

An individual is guilty of criminal mischief when he or she recklessly damages the property of another individual in an amount exceeding \$250 N.Y. Penal Law §145.00 (Board Review 17). A person is guilty of reckless endangerment in the second degree when he or she recklessly engages in conduct which creates a substantial risk of serious physical injury to another person N.Y. Penal Law §120.20 (Board Review 16). An officer commits an abuse of authority when he threatens to make an arrest for which he has no probable cause PD v. Bradley OATH case 75419/00 (2001) (Board Review 15). Patrol Guide procedure 217-01 instructs officers to prepare an accident report when responding to the scene of a vehicle accident (Board Review 11).

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation E–Discourtesy: PO Peter Marter spoke discourteously to [REDACTED].

Allegation F–Abuse of Authority: PO Peter Marter threatened to seize [REDACTED] property.

Allegation G– Discourtesy: PO Timothy Finn spoke discourteously to [REDACTED].

[REDACTED] stated that he did not have money to pay [REDACTED] and PO Marter said, “What the fuck did you do all morning? You are standing here and do not have \$200?” [REDACTED] explained that the money in his cart was not his money—it was the business’ money. PO Marter said that he could take [REDACTED] cart, and that [REDACTED] would lose his job and go to jail. PO Finn said, “We get tired of these pieces of shit in the street,” presumably referring to the cart. PO Finn then said, “You’re going to pay the fucking money now, or you are going to stay in jail until next week. [REDACTED] felt pressure to pay the money (Board Review 3).

[REDACTED] said that she had her windows up and that she saw conversation, but she did not hear everything said. She said that she did not hear either officer use profanity (Board Review 7).

The video established that PO Finn said at 1:10, “It’s either [you pay], or you’re coming with me in handcuffs, and you’re not getting out until fucking Saturday next week.” At 1:47, PO Marter said, “So what are we going to do with your cart? We’re just going to take your cart? What do you mean that’s not your money? Where is the money from your cart? Where’s all the

money that you have been making?” (Board Review 4 for original video; Board Review 5 for Snagit video; Board Review 6 for transcription).

PO Finn said that he never said, “We get tired of these pieces of shit in the street.” PO Finn did not recall PO Marter saying, “What the fuck did you do all morning? You are standing here and do not have \$200?” PO Finn did not recall saying, “You are going to pay the money right now, or you are going to stay in jail until next week,” or anything similar. PO Finn first stated that he did not recall if he or PO Marter used any profanity during this incident. Upon viewing the video, he acknowledged saying “fucking.” When asked why he used profanity, he said that he did not know (Board Review 8).

PO Marter did not recall using any profanity during this incident and did not recall PO Finn using any profanity. PO Marter did not specifically recall saying that [REDACTED] cart could have been taken from him if he was arrested, but said that he might have said this, because it was true—the cart would have been vouchered as part of the arrest process (Board Review 9).

According to Patrol Guide procedure 218-01, officers may seize property as arrest evidence, investigatory evidence, forfeiture, decedent’s property, found property, safekeeping, peddler property, or to determine the property’s true owner (Board Review 10). According to Patrol Guide procedure 203-09, officers must be courteous and respectful (Board Review 14).

§ 87(2)(g)

Allegation H—Abuse of Authority: PO Timothy Finn frisked [REDACTED].
Allegation I—Abuse of Authority: PO Timothy Finn searched [REDACTED].
Allegation J—Abuse of Authority: PO Timothy Finn interfered with [REDACTED]. use of a recording device.
Allegation K—Abuse of Authority: PO Timothy Finn searched [REDACTED]. recording device.
Allegation L—Abuse of Authority: PO Timothy Finn deleted information on [REDACTED]. recording device.

Immediately after handcuffing [REDACTED] PO Finn patted down [REDACTED] front left pants pocket, and then put his hand inside this pocket for approximately three seconds. PO Finn then patted down [REDACTED] front right pants pocket and put his hand inside this pocket. PO Finn then patted down [REDACTED] right front jacket pocket, and then placed his hand inside this pocket. PO Finn then patted down the two pockets on the right and left inside panels of [REDACTED] jacket, which was unzipped, and then placed his hand inside this pockets. PO Finn then patted down [REDACTED] right back jeans pocket and placed his hand inside this pocket, then PO Finn patted down the back left pocket, and then placed his hand

inside. PO Finn retrieved [REDACTED] cell phone from his left back pants pocket. PO Finn then looked at the phone and asked if [REDACTED] recorded the conversation. [REDACTED] responded that he had recorded the conversation. [REDACTED] saw PO Finn delete the video that had been recording on his phone. PO Finn then placed [REDACTED] phone inside [REDACTED] inside jacket pocket. After the incident, a friend provided [REDACTED] with instructions on how to retrieve a deleted video, and he was able to do so successfully (Board Review 3).

PO Finn stated that when [REDACTED] said the officers could arrest him, PO Finn considered [REDACTED] under arrest. He patted down [REDACTED] as part of the arrest procedure. [REDACTED] began to reach for something in his jacket pocket, and PO Finn, not knowing what he was reaching for, also reached toward the pocket, and pulled out his cell phone. PO Finn saw that the phone was recording, so he pressed stop because he did not want [REDACTED] phone to die. There was no other reason why he stopped the video. PO Finn did not delete the video. PO Finn then put the cell phone back in [REDACTED] pocket (Board Review 8).

PO Marter stated that he never saw PO Finn take [REDACTED] cell phone or delete anything off his cell phone (Board Review 9).

Officers are entitled to conduct a frisk and search of an individual incident to an actual arrest, not just probable cause that might have led to an arrest, but did not. People v. Reid 24 N.Y.3d 615 (2015) (Board Review 18).

According to Patrol Guide 208-03, civilians are permitted to photograph, videotape, and record police actions (Board Review 12). Officers must possess a warrant in order to conduct a search of a cell phone People v. McGee 841 N.Y.S.2d 827 (Crim. Ct. N.Y. Cty. 2007) (Board Review 19).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

[Redacted text block]

Squad: 11

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date